

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0087P**

Sales and Use Taxes

**Calendar Year 2001 and Months January through June, 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalties assessed for failure to file sales tax returns in a timely manner.

**II. Tax Administration – Interest**

**Authority:** IC 6-8.1-10-1

The taxpayer protests the assessment of interest.

**STATEMENT OF FACTS**

The taxpayer is a corporation engaged in the sale of real estate. The taxpayer filed its sales tax returns after their respective due dates for each month of 2001 and the first six months of 2002. Accordingly, the Department assessed a penalty and interest on each of these returns for the taxpayer's failure to timely remit Indiana sales tax. In its letter of protest, the taxpayer requested that the penalties and interest be abated due to reasonable cause.

**I. Tax Administration – Penalty**

The taxpayer protests the imposition of penalty based upon the following:

- The taxpayer's former executive team violated its fiduciary duties by failing to file tax returns in a timely manner.
- The taxpayer's funds have been depleted, and payment of the penalties would impede the taxpayer's ability to continue its business activities.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer submitted documentation to substantiate its claim that past members of its management team were negligent. However, according to the taxpayer's letter of protest, this prior management team has been replaced by one which is, “...committed to being in full compliance with all rules and regulations relating to sales and use tax...” Indeed, the Department notes that the taxpayer's filing record since July 2002 has greatly improved. As commendable as that is, however, in determining negligence, the Department must evaluate the taxpayer's filing behavior during the period under review: January 2001 through June 2002. Clearly, the taxpayer was negligent throughout this period of time.

Regarding the taxpayer's assertion that payment of the penalties will exacerbate its present financial hardship, the Department has no authority to waive penalties on this basis.

### **FINDING**

The taxpayer's protest is denied.

## **II. Tax Administration – Interest**

The Department does not have the authority to waive interest.

### **FINDING**

The taxpayer's protest is denied.